



Northwestern
University

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EXPORT CONTROLS COMPLIANCE

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Policy Statement

Northwestern University (“Northwestern” or “University”) must comply with all export control regulations issued by the federal government, which apply to all activities at Northwestern.

Purpose

This policy outlines the responsibilities of the Northwestern community to comply with federal export control regulations, and the repercussions of noncompliance. These regulations were created to protect national security, foreign policy, and economic interests of the United States. The federal government regulates the export of certain items or information through the issuance of regulations that either prohibit, or require licensing prior to, the export of such items. An export may occur through either the actual shipment or transmission of certain items or information outside of the United States through various means or through the release of certain items or information to a Foreign National within the United States.

Violation of export control regulations could result in criminal and civil penalties, including significant monetary penalties, imprisonment, debarment and suspension, and the loss of exporting privileges.

Audience

All members of the Northwestern community, including faculty, staff, and students.

Definitions

CCL (Commerce Control List): a list of Dual Use Items under the specific jurisdiction of the Department of Commerce, subject to regulation under the EAR.

Deemed Export: the release of technology or source code controlled under the EAR to a Foreign National within the United States.

Dual Use Items: items controlled under the EAR that can be used both in military and civilian applications.

EAR (Export Administration Regulations): policies and regulations issued by the U.S. Department of Commerce's Bureau of Industry and Security, which govern "Dual Use" items.

Export: as defined by the EAR, an actual shipment or transmission of items subject to the EAR out of the United States.

Foreign National: an individual who is not a United States citizen, permanent resident alien of the United States (i.e. "green card holders"), lawfully-admitted temporary resident alien or refugee, or other protected individual as defined by 8 U.S.C. 1324b(a)(3).

Fundamental Research (under the EAR): research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

Fundamental Research (under the ITAR): research in science and engineering at accredited institutions of higher learning in the U.S., where the resulting information is ordinarily published and shared broadly in the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. government access and dissemination controls. Research will not be considered fundamental research if: (i) the university or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or (ii) the research is funded by the U.S. government and specific access and dissemination controls protecting information resulting from the research are applicable.

Fundamental Research Exclusion (FRE): policy established under National Security Decision Directive 189, issued in 1985, which states that the products of Fundamental Research are excluded from the export control regulations.

ITAR (International Traffic in Arms Regulations): regulations issued by the U.S. Department of State's Directorate of Defense Trade Controls, which control the export and import of defense articles and defense services.

Office for Export Controls Compliance: a centralized office within Northwestern’s Office for Research which is responsible for implementing, overseeing, and communicating policies and procedures governing export controls compliance within the University.

OFAC (Office of Foreign Assets Control): a division of the U.S. Department of Treasury, which administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

Restricted Party Lists: a series of lists published by the U.S. Departments of Commerce, Treasury, and State as well as the General Services Administration, which identify the names of companies and individuals to whom there exists restrictions upon the ability to export controlled items. These lists include the Denied Persons List, the Unverified List, the Entity List, the Specially Designated Nationals List, the Debarred List, and the Excluded Parties List.

Technology Control Plan (TCP): an internal written document that provides for the policies and procedures to be used to protect potentially controlled, sensitive, or proprietary information at Northwestern.

USML (United States Munitions List): a list of articles, technical data, and defense services which are designated as defense- and space-related by the U.S. government and thus subject to ITAR regulations.

Policy Implementation

1.0 Guiding Principles

One of the underlying principles in conducting research at Northwestern is academic freedom. Relative to export control regulations, this means that research activities should be undertaken freely and openly with no restrictions on the dissemination of research results or access to research results by Foreign Nationals. By adhering to this principle, Northwestern is able to operate under the Fundamental Research Exclusion (FRE), which largely limits the impact of the export control regulations on Northwestern’s research activities. The FRE allows Northwestern to conduct its research without having to obtain licenses before sharing information with Foreign Nationals. This exclusion, however, does not apply in all circumstances. In the absence of this exclusion or any other available exception, exemption or exclusion outlined in this Policy and/or in the export control regulations, Northwestern must obtain the appropriate license or approval, if necessary, before engaging in any exporting.

1.1 Fundamental Research Exclusion

Under the FRE, Northwestern operates within a safe harbor that largely excludes the University from the export control regulations as they relate to university research. This exclusion requires that research be conducted freely and openly, with no restrictions upon access to the underlying research by Foreign Nationals. Under the ITAR, “fundamental research” may occur at “any accredited institution of higher education located in the United States,” while under the EAR, such research may occur at facilities other than accredited institutions of higher learning in the United States. In the absence of the FRE, Northwestern would be required to obtain licenses and/or restrict the involvement of certain Foreign Nationals from research. Thus, the protection of the FRE is critical to Northwestern’s ability to conduct research in an open environment consistent with the principle of academic freedom.

Codified in both the EAR and the ITAR regulations, the FRE provides a safe harbor for institutions, including Northwestern, who are engaged in the conduct of Fundamental Research. The FRE can be destroyed if the University: (a) accepts restrictions on publication other than a temporary delay to ensure the appropriate safeguarding of proprietary information and patent rights; or (b) accepts restrictions on the participation of Foreign Nationals in the research. Additionally, any arrangements between a researcher and outside sponsors that act contrary to the principles of openness in research, outlined below, could serve to destroy the FRE.

1.2 *Openness in Research*

Northwestern is committed to freedom of access by all interested persons to the underlying data, processes, and final results of research through the publication and broad dissemination of those results. Consistent with this approach, Northwestern does not undertake secret or classified research or research whose results may not be published without prior approval by the sponsor. Additionally, unless prohibited by law, no restriction on participation in research may be based on one's country of origin or citizenship.

1.3 *Policy on Discrimination and Harassment*

The University's [Policy on Discrimination and Harassment](#) holds that Northwestern does not discriminate or permit discrimination by any member of its community against any individual on the basis of any classification protected by law in matters of the educational programs or activities it operates. Consistent with this policy, Northwestern does not accept any restrictions upon the involvement of Foreign Nationals in its research projects, unless required by law.

2.0 *Activities Beyond the Scope of the FRE*

While the FRE provides Northwestern with a safe harbor in which to conduct its research, it does not cover all activities at the University. For instance, the shipment of physical items beyond the borders of the United States is not covered by the FRE. Any items that come into the possession of Northwestern which are protected under a proprietary information or non-disclosure agreement, including material transfer agreements, are not covered by the FRE. Also, any activity involving a restricted party or an embargoed country must be reviewed to ensure that it is appropriate under the law. To ensure that any activities falling outside the scope of the FRE are given proper attention, Northwestern faculty and staff should engage the [Office for Export Controls Compliance \(OECC\)](#) to review any issues that may be subject to the export control regulations.

3.0 *Additional Exclusions from the Export Control Regulations*

3.1 *Public Information Exception*

The EAR (at 15 C.F.R. 734.7) and ITAR (at 22 C.F.R. 120.11) specifically exclude “publicly available technology and software” (EAR) and “information in the public domain” (ITAR) from those export control regulations. These regulatory provisions provide a further safe harbor for activities at Northwestern, related to information that has been published or resides in the public domain.

3.2 *Educational Information Exclusion*

The EAR (at 15 C.F.R. 734.3) and ITAR (at 22 C.F.R. 120.10 (b)) regulations each contain an educational information exclusion, which states that the export control regulations do

not apply to: (a) “information and software that are released by instruction in a catalog course or associated teaching laboratory of an academic institution” (EAR) nor to “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities” (ITAR). These regulatory provisions mitigate concerns about export control violations occurring in the classroom setting. These exclusions provide a safe harbor for Northwestern in teaching its students, both through classroom activities and through research.

4.0 *Deemed Exports*

In the University setting, an export can occur on campus when wholly within the United States, under the Deemed Export rule. This rule holds that the release of controlled technology or technical data to Foreign Nationals in the United States is “deemed” to be an export to that Foreign National’s country or countries of nationality. Deemed Exports may be undertaken only within an appropriate exemption, exclusion (including the aforementioned FRE), or license issued by the federal government.

5.0 *Regulated Items and Regulating Agencies*

5.1 *Commerce Control List (CCL)*

The primary list of items subject to control under the export control regulations is the CCL, which is published by the Department of Commerce’s Bureau of Industry and Security at <http://www.bis.doc.gov/>. This list specifies Dual Use Items that are classified under an Export Control Classification Number (“ECCN”) and then controlled based upon various concerns and the destination of the item.

5.2 *United States Munitions List (USML)*

The State Department publishes the USML, a separate list of defense-related items controlled due to their potential use in military applications. Items specifically listed on the USML require a license before they can be exported. The USML is published at www.pmdtc.state.gov.

For a complete list of federal departments and agencies having export control responsibilities, please visit: <http://www.bis.doc.gov/index.php/about-bis/resource-links>.

6.0 *Northwestern University OECC*

Northwestern’s [Office for Export Controls Compliance](#) (OECC) exists within the Office for Research and is responsible for implementing policies and procedures in compliance with the regulations governing export controls.

OECC is responsible for:

- educating the Northwestern community regarding its obligations under the law;
- identifying high risk areas that are impacted by export control regulations; monitoring and interpreting developments in the export control regulations field;
- interacting with regulating agencies to maintain an open dialogue regarding the applicability of the export control regulations in the university setting;
- engaging with other University offices, as appropriate, to ensure that often complex regulations are properly reviewed and that perspectives are shared;

- creating and implementing Technology Control Plans (TCPs), with the assistance of researchers and administrative staff, to ensure compliance with export control regulations;
- applying for export control licenses, when necessary;
- ensuring that appropriate records are kept, and that periodic audits are conducted to monitor export controlled activities at Northwestern; and
- creating and maintaining an export controls website.

OECC is the primary point of contact for the review of all issues related to export controls at the University, including those raised in agreements with external parties.

While OECC should be engaged whenever there is any question regarding the applicability of export control regulations, various other offices within Northwestern may be affected by or otherwise involved in export controls compliance. These offices include the Office of General Counsel, Sponsored Research, the International Office, Financial Operations (including the Treasurer and Accounts Payable), Purchasing, Research Safety, Human Resources, Global Safety and Security, Study Abroad, Innovations and New Ventures, and Core Facilities, among others. Each of these offices is directly (or indirectly) impacted by the export control regulations, and OECC will work closely with these offices to ensure compliance with the regulations.

7.0 *Acceptance of Export-Controlled Information*

Northwestern generally does not accept any export-controlled information without having first been informed and having granted written authorization. The acceptance of export-controlled information necessitates obtaining licenses and implementing other practices and procedures to ensure that such information is appropriately protected. In addition to determining whether such information can be shared with a Foreign National, Northwestern would be required to safeguard the information to prevent any inadvertent disclosures. By requiring notice and written agreement, Northwestern is engaging in due diligence to maintain compliance with the export control regulations. These processes can be time-consuming and potentially costly, so the earlier these issues are identified, the better-equipped Northwestern is to manage the situation.

When it is necessary to accept export-controlled information, OECC will implement a TCP to ensure compliance with the export control regulations. The TCP will demonstrate a commitment to export controls compliance, will identify applicable export controlled items or technologies subject to the export controls, and will outline the security measures to be taken to ensure compliance. These measures might include: laboratory compartmentalization, written marking of export controlled items, secure areas, password-protected information, and confidential communications, or other appropriate measures. The TCP will also identify by nationality each participant in the research who will potentially have access to the export controlled item or information, and will provide for appropriate screening of all such participants. Under these unique circumstances, OECC's Director will be engaged and will work with the requesting party to implement a TCP that must be signed by the responsible Principal Investigator, the appropriate Dean of Research, and the Department Chair. Any individual having access to items or information under a TCP must be informed of the elements of the TCP and must acknowledge acceptance of and compliance with those terms in writing.

8.0 *I-129 Certifications*

The federal government, through the Department of Homeland Security, requires that certain petitions filed by employers on behalf of Foreign Nationals must be accompanied by a certification indicating that: (a) an export license is not required from either the U.S. Department of Commerce and/or the U.S. Department of State to release any technology or technical data to the Foreign National; or (b) a license is required from

the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the Foreign National and the petitioner will prevent access to the controlled technology or technical data by the Foreign National unless and until the employer has received the required license or other authorization to release the technology or technical data.

Typically, Northwestern can provide this certification with the understanding that no controlled technology or technical data will be shared with any Foreign Nationals, either due to an appropriate exclusion which removes such technology or technical information from the export control regulations (such as the FRE), or because Northwestern has appropriately vetted all such technology and/or data, and has ensured, through contract or otherwise, that no such controlled technology or data is present at Northwestern. To the extent that any controlled technology or data may come to exist at Northwestern, the appropriate party must engage OECC to ensure that an appropriate review is undertaken.

9.0 *Obtaining Licenses for Exports*

Typically, as outlined above under the FRE and other exclusions, Northwestern is not required to pursue licenses to undertake the majority of its activities at the University. However, as circumstances warrant, Northwestern's OECC will work with the appropriate federal agency to secure licenses for export controls compliance. Most commonly, a license might be required for the physical shipment of items overseas. In that event, it is expected that the requesting party will notify OECC of the need to ship potentially controlled items overseas, and will work with OECC to properly identify those items and determine whether or not a license is required.

The license process can take several weeks or months, so OECC should be engaged as soon as possible to ensure that the licensing process does not unduly interfere with the work. For example, if it is recognized during a grant proposal that there may be export controlled materials required as deliverables under the agreement, then OECC should be engaged at the time of proposal to ensure that a timely license application can be made.

10.0 *Screening at Northwestern*

Northwestern screens both individuals and entities that are identified as potential risks for export control violations. Certain Foreign National employees, students, and other members of the community as well as entities with whom Northwestern conducts business (e.g. vendors, sponsors, and subcontractors) may be screened against various Restricted Party Lists to ensure that conducting business with such individuals and/or entities is appropriate and within the law.

Northwestern should not conduct business with any person or entity that is identified as a match against these lists until OECC is informed. Once OECC is informed, the appropriate due diligence will be undertaken to ensure that Northwestern will remain in compliance with the regulations. Additionally, there are restrictions upon activities involving certain countries subject to embargoes enforced by the U.S. Department of the Treasury.

11.0 *Reporting*

In order to ensure compliance, and to provide the Northwestern community with the opportunity to report any suspected incidents of non-compliance, OECC suggests that any reports or concerns be communicated by either e-mail exports@northwestern.edu or telephone 847-467-4063. Reports can also be made through EthicsPoint, by calling 866-294-3545 or via the Ethics Point website at <https://secure.ethicspoint.com>.

Consequences of Violating this Policy

Failure to comply with the various export control regulations can result in both criminal and civil penalties. Under the EAR regulations, criminal penalties can involve imprisonment and significant monetary penalties up to \$1 million per violation, while civil penalties are also substantial. Additionally, the loss of exporting privileges – including the FRE – may result, which could substantially curtail Northwestern’s ability to conduct research with its international student population, and international collaborators, as Northwestern would be required to obtain licenses before sharing certain items or information with any Foreign National or foreign entity. Any violation of this policy may result in disciplinary action, up to and including termination of employment and academic dismissal.

Related Information

[Department of Commerce Bureau of Industry and Security website](#)

[Export Administration Regulations \(EAR\), 15 C.F.R. 730-774](#)

[State Department Directorate of Defense Trade Controls website](#)

[International Traffic in Arms Regulations \(ITAR\), 22 C.F.R. 120-130](#)

[Office of Foreign Assets Control \(OFAC\) website](#)

[U.S. departments and agencies with export control responsibilities](#)

[Northwestern Office for Export Controls Compliance \(OECC\) website](#)

[Deemed Export Certification](#) – I-129 certification required by law as of February 20, 2011

[Sample Technology Control Plan](#)

EthicsPoint website - <https://secure.ethicspoint.com>.

[Northwestern Policy on Discrimination and Harassment](#)

Contacts

The following individual can address questions regarding this policy:

Ann K. Adams, Senior Associate Vice President for Research, Office for Export Controls Compliance at a-adams@northwestern.edu

History

Policy originated in May 2014 and was last amended in February 2018.

Policy URL:

<http://exports.northwestern.edu/policies/>